
Intellectual Property Rights in the Arab World

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For the 280 million people inhabiting the area stretching from Rabat to Muscat, economic prospects are grim. Arab scholars are frustrated with the region's lackluster performance in the marketplace. They worry that stagnant economic growth and an exploding population could mean that significant unemployment will continue to plague the area for years to come. These concerned scholars argue that it is not the historic burdens of colonial rule or a lack of natural resources that keep Arab countries from advancing. Instead, they argue that Arab countries have done a poor job of developing and using the intellectual resources they have.

The recently published United Nations Arab Human Development Report (UNAHDR) has identified a host of reasons why Arab economic performance has floundered, ranging from regional conflict to the disenfranchisement of women.¹ Included high among the causes is the "knowledge gap" that the region is currently facing.² The Arab region, which led the world in scientific study in the Middle Ages, has done a poor job in recent times of developing new scientific and technological capacity, and effectively using the capacity it already has. If in fact the UNAHDR is correct in its assertion that, "development prospects for Arab countries are increasingly linked to the capabilities of their work forces and the

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quality of their intellectual capital,” then this sort of poor policy decision-making must end.³ Indeed, the future economic status of the region will depend greatly on the ability of Arab countries to utilize the intellectual resources they possess, particularly when recent global economic trends are taken into account.

Shifting Sources of Economic Prosperity. For much of the twentieth century, economic prosperity for all countries was measured by their level of industrial development. The number of factories, smoke stacks, and assembly lines a country had were worn like honor badges, displaying that nation’s level of development to the rest of the world. However, over the course of the last few decades, the

as movies, sound recordings, and books. These examples illustrate the main difference between traditional industrial economies and knowledge-based economies. Unlike industrial economies, where value is measured primarily by output of physical products, the value in knowledge-based economies is in the information, knowledge, and know-how that go into a particular good or service. It is this sort of intangible property that is the main driving force in knowledge-based economies.

It is clear to many economists what the UNAHDR acknowledges: economic prosperity for all countries for the foreseeable future will increasingly be tied to how they transition to knowledge-based industries.⁵ There is a question whether developing countries, most of which never achieved broad

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composition of the leading economies has shifted. This shift has been marked by a decline in the overall contribution of large-scale manufacturing industries that rely heavily on low-skilled labor, and a rise in the economic importance of high-technology or “knowledge-based” industries.⁴

Knowledge-based industries are characterized as those that produce goods and services that require highly-skilled and talented human resources to create, develop, or manufacture. Final products include new software programs and gene-based treatments for disease, but could also include media products that disseminate knowledge and culture, such

industrial development, can meet the burden of such a shift at all. But despite the doubts these circumstances may engender, the growing importance of knowledge-based industries does present an incredible opportunity for developing countries to achieve never-before-realized economic prosperity. While wealth currently generated in many developing countries stems from tilling fields, excavating minerals, and pumping oil, governments have the opportunity to transform their economies by focusing economic development strategies on building knowledge-based industries—using existing assets to produce intangible property.

Intellectual Property as an Economic Catalyst.

By its very nature, the creation of intangible property begins with talented and skilled human capital. Despite the fact that many Arabs lack even primary education, the UNAHDR points out that there are actually more scientifically and technically skilled workers in the region than there are jobs, a testament to the underdevelopment of knowledge-based industries. However, this surplus of human capital is all the more impressive considering that most Arab countries have, for a number of years, also experienced a "brain drain" of skilled people to the United States and Europe, due to the dim economic prospects skilled Arabs have at home.⁶ The key then for Arab countries that want to pursue a knowledge-based economy is to provide an environment that will accommodate and utilize the creativity and ingenuity of their skilled citizens, and which will channel their skills into the creation of intangible property and result in economically productive enterprises. As the UNAHDR suggests, incentives to support greater creativity and innovation must be established.⁷ One of the most proven and effective means of encouraging creativity and innovation has been the intellectual property rights system.

Intellectual property rights have long been a chief mechanism by which leading economies have encouraged and rewarded innovation and creativity. Intellectual property rights, such as patents and copyrights, give inventors, authors, and businesses exclusive economic rights to the intangible property they create. With these exclusive economic rights in hand, creators can take their intangible property to market, where they have the opportunity to both recoup substantial development

costs and to gain profits. Without the exclusive economic rights provided by patents and copyrights, the economic incentive to create is destroyed through price undercutting from competitors who did not have to bear the burden of initial development costs.

Given the integral role intellectual property plays in the creation of intangible property, it makes sense for all countries to focus their economic development strategies on providing strong intellectual property rights and a legal system to enforce them. However, while acknowledging the importance of intellectual property, many developing countries—including most Arab countries—have done little to integrate intellectual property rights into their national economic policies. While there are a number of reasons behind this foot dragging, one of the chief reasons has been the suspect view towards intellectual property held by many developing-country policymakers and so-called development activists.

Correcting Assumptions about Intellectual Property.

Although measures to provide intellectual property rights go back centuries, few developing countries regard intellectual property as a key component of their overall economic strategy. In fact, many developing countries have a negative view of strong intellectual property rights, perceiving them as only a benefit for developed countries. They are seen as a tool through which U.S., European, and Japanese corporations can impose a new kind of economic colonialism on them.

This perception stems in large part from the heated trade battles that took place when the United States and other developed countries began tying intellectual property protections to trade in the

late 1980s. This effort culminated in the inclusion of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) as an associated agreement under the auspices of the World Trade Organization (WTO).⁸ During the negotiations over the TRIPS agreement, developed countries, led by the United States, insisted that strong intellectual property rights be adopted by WTO member countries in order to protect the intangible property created in their countries from being pirated in other—generally developing—parts of the world. In response, not only did many people in developing countries begin to perceive intellectual property as valuable to only the interests of developed countries, but they also began to see intellectual property piracy as an economic benefit and means of acquiring advanced technologies. Policymakers in developing countries and critics of the intellectual property system have further argued that developing countries should not clamp down on pirates and counterfeiters because the intellectual property system raises prices of products and services higher than what people in poor countries can afford.⁹

While points raised by critics of the intellectual property system have some truth to them, they are often shortsighted observations. The advocates of intellectual property piracy ignore the negative impact that intellectual property piracy has on a country. For example, as a result of piracy, governments in developing countries lose out on critical tax revenues from the sales of pirated goods since they occur in the black market.¹⁰ Furthermore, governments of developing countries are also left unable to protect consumers from untested, second-rate, or even dangerous products since there can be no regulatory oversight on

black market goods.¹¹ Lastly, there is the fact that organized crime and some terrorist groups have turned to intellectual property piracy as a source of funding.¹²

Besides enduring these direct negative effects, governments that condone intellectual property piracy also miss out on the economic and social benefits that may be obtained when there is an effective intellectual property system in place. Studies have proven that multinational corporations, particularly those that produce intangible property, shy away from investing in countries that lack strong intellectual property rights.¹³ By providing strong rights and enforcement of intellectual property laws, developing countries can encourage foreign direct investment that in turn brings them a greater level of technology transfer than piracy never will.

More importantly, developing countries can use the intellectual property system to encourage the establishment of knowledge-based industries that are founded on their own cultural, technical, and scientific knowledge. Developing countries have a wealth of resources upon which to build domestic knowledge-based industries. From rich cultural expressions in the form of music, movies, and art to cutting edge research conducted in national laboratories, intellectual property rights can protect the underlying intangible property and facilitate the growth of knowledge-based industries at home. Furthermore, the diffusion of knowledge encouraged by intellectual property broadens the knowledge base and fuels even greater subsequent ingenuity and creativity.¹⁴ Far from the idea that intellectual property is somehow a new economic colonialism, intellectual property rights are a way in which developing countries can diversify their

economies and liberate themselves from dependence upon unstable natural resource and commodities markets.

Getting it Right in the Arab World.

Most Arab countries have done poorly at integrating intellectual property rights into their national economic policies, but some are beginning to realize the importance of intellectual property for their economic interests. Kuwait, for example, has stepped up enforcement of copyright laws amid clamoring by Kipco and other domestic companies over rampant software piracy that has hurt their businesses.¹⁵ Egypt's parliament recently passed a comprehensive revision to that country's intellectual property laws. According to the Speaker of Parliament, the motivation behind this highly controversial legislative act was to promote, "Egypt's image as an investment-friendly haven in the Middle East."¹⁶ While Kuwait and Egypt are beginning to view intellectual property as a positive policy choice, the Kingdom of Jordan is far ahead of both countries in this respect.

Since his accession to the throne in 1999, Jordan's King Abdullah has taken an active role in stimulating the economy by strengthening economic ties with both regional and international trading partners. The provision of strong intellectual property rights has played a significant role in this strategy. For instance, in 1999, Jordan brought its patent and copyright laws in line with TRIPS standards, helping to pave the way for Jordan's accession to the WTO that year.¹⁷ In 2000, Jordan agreed to sign on to the World Intellectual Property Organization's (WIPO) Copyright Treaty, and its Phonograms and Performances Treaty. Jordan also adopted laws concerning data

exclusivity for pharmaceuticals and agricultural chemicals, all of which went a long way toward sealing a Free Trade Agreement with the United States.¹⁸

While a major impetus behind the adoption of new intellectual property standards was an enhanced trade position, intellectual property has also become a very important part of Jordan's efforts to build its own knowledge-based industries. Under King Abdullah's direction, Jordan has been working to establish itself on the "global Information Technology (IT) map," looking to spur development of an export-led IT industry.¹⁹ Efforts to help grow Jordan's IT industry include the creation of the REACH document—a comprehensive strategic plan assembled by IT industry members, and the formation of the Information Technology Association of Jordan (Int@j).²⁰ However, as Basseem Awadallah, head of the economic unit at the Royal Court identified, the "first 'right thing' Jordan did was to promulgate and enforce world-class intellectual property rights legislation."²¹

Jordan's new intellectual property rights, particularly the passage of a new copyright law in 1999 that brought software squarely under copyright protection, have laid an essential foundation for Jordan's IT industry. Since the incorporation of modern copyright laws, software has led the growth of Jordan's burgeoning IT industry. In 1998, total sales of software and IT-related services were \$22.3 million. By 2001, Jordanian IT companies netted \$130 million in total revenues, over half of which were generated through software.²² Even start-up IT companies have been blossoming in Jordan despite the current global industry slump, says Ra'ed Bilbessi, CEO of Int@j. From October through November 2001,

25 new IT start-up companies were registered at the Ministry of Industry and Trade.²³ According to official figures, estimates place the number of IT workers at about 5,000,²⁴ four times as many as there were in 1998.²⁵

Given the importance software has within the IT industry, the government has taken great steps to improve copyright enforcement. Since 1999, software piracy has decreased from a staggering 90 percent to a more palatable 70 percent.²⁶ In 2000, there were six copyright cases filed with Jordanian courts, but since 2001, more than 350 cases have been filed.²⁷ With modern intellectual property laws in place and a government willing to enforce them, Jordan's IT industry has attracted investment from Jordanians, both inside the country and those doing business abroad, as well as from large multinational IT firms like Intel and Microsoft.²⁸ By 2001, Jordan had attracted \$60 million dollars in foreign investment.²⁹

policy. With assistance from organizations like the WIPO, the United States Agency for International Development, and the Jordanian Society for the Protection of Intellectual Property Rights, campaigns to educate business people and lawyers should continue to yield positive results.

Embracing Intellectual Property. Knowledge-based industries, which are driven by innovation and the production of intangible property, are central in the new world economy. The road to improved economic performance, in a marketplace where ideas are more valuable than tangible goods, must begin with mechanisms that effectively protect and facilitate the commercial use of intangible property. The UNAHDR recognizes that, "[intellectual property rights] are critical to the development of the individual and commercial incentive structure that drives innovation."³¹ To

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The realization that intellectual property protection is a key component of future economic growth has reached many in Jordan. As Talal Abu-Ghazaleh, a prominent attorney in Jordan puts it, "many decades of absent or minimal intellectual property protection in the Arab world has given us enough time to see that not protecting IP is not a solution."³⁰ To promote public awareness of intellectual property's importance, the government, working primarily through the National Library, has been busy implementing an aggressive anti-piracy

their credit, some policymakers in the Arab world, most notably in Jordan, have also recognized intellectual property's central role in spurring innovation and the effect that this will have on future economic growth.

However, adoption of strong intellectual property rights throughout the Arab world will be difficult to achieve. With attention drawn to the Palestinian-Israeli conflict, tension over future military action in Iraq, and the global "War on Terror" focused in Afghanistan, many Arab policymakers have understandably

placed political and military concerns above economic ones. Further, there are many critics who continue to argue that intellectual property rights hinder economic development in developing countries. But discounting or ignoring the importance of intellectual property in the development of knowledge-based indus-

tries will prove costly for Arab countries—and indeed all countries in the world. Though certainly not a panacea to all of the region's difficulties, intellectual property rights can create the right environment to tap into domestic creativity and innovation, ultimately paving the way to stronger Arab economic growth.

NOTES

1 *Arab Human Development Report 2002*, United Nations Development Programme: Creating Opportunities for Future Generations, Arab Fund for Economic and Social Development [hereinafter "Arab Report"].

2 *Ibid.*, 5.

3 *Ibid.*

4 For a general discussion on this economic trend, see Magnus Bloomstrom, et. al., *Growth and Innovation Policies for a Knowledge Economy; Experiences from Finland, Sweden and Singapore* (Oct. 2002).

5 Arab Report, supra note 1: 5.

6 *Ibid.*, 8.

7 *Ibid.*, 7.

8 For a general discussion on the integration of intellectual property and the TRIPS agreement into the World Trade Organization structure, see Michael P. Ryan, *Knowledge Diplomacy: Global Competition and the Politics of Intellectual Property* (1998).

9 For a collection of work arguing that intellectual property rights hinder the economic development of developing countries, see Commission on Intellectual Property Rights, *Integrating Intellectual Property and Development Policy* (2002).

10 See, "Mexico-Microsoft Pirated Software Costs Mexican Government \$250 Million in Taxes," *EFE News Service*, 31 Jan. 2001. See also, Karnjana Karnjanatawe, "Intellectual Property: Thai Government Would Benefit From Stronger Anti-Software Piracy Measures; Tax payments of US \$134 Million Possible by 2001," *Bangkok Post*, 13 May 1998.

11 For instance in China, an estimated 192,000 died in 2001 due to counterfeit pharmaceuticals. Peter S. Goodman, "China's Killer Headache: Fake Pharmaceuticals," *The Washington Post*, 30 Aug. 2002, A(1).

12 Gordon Masson, "Interpol Forms Intellectual Property Rights Group," *Billboard* (10 Aug. 2002).

13 Edwin Mansfield, "Intellectual Property Protection, Foreign Direct Investment, and Technology Transfer," IFC Discussion Paper Number 19 (1994).

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20 The REACH Initiative: Launching Jordan's Software and IT Services Industry, A Strategy and Action Plan for H.M. King Abdullah II (Mar. 2000) [hereinafter "REACH Document"].

21 Sawalha, supra note 17.

22 Francesca Sawalha, "King Says ICT On Right Track, Prods A Public, Private Sectors to 'Do More,'" *Jordan Times*, reprinted at <http://www.intaj.net/news/readnews.cfm?id=558> (Last visited 30 Sept. 2002).

23 Francesca Sawalha, "Progress with IP not as Fast as Leadership, Private Sector Wish, But Outlook Remains Positive," *Jordan Times*, reprinted at <http://www.intaj.net/news/readnews.cfm?id=268> (Last visited 30 Sept. 2002).

24 Sawalha, supra note 22.

25 Estimates placed the number of Jordanian IT workers at approximately 1,250 in 1998. REACH Document, supra note 16, at 20.

26 Suha Ma'ayeh, "Piracy 'Biggest Single Threat' to IT Industry," *Jordan Times* (1 Feb. 2001), reprinted at <http://www.intaj.net/news/readnews.cfm?id=37> (Last visited 30 Sept. 2002).

27 Letter from Tawfiq Tabbaa, Assistant Program Officer, Cooperation for Development Bureau for Arab Countries, World Intellectual Property Organization, to Frank Pietrucha, Media Specialist, International Intellectual Property Institute (11 Aug. 2002) (on file with the International Intellectual Property Institute).

28 "Computing Reform," *Middle East Economic Digest* (31 May 2002).

29 Sawalha, supra note 22.

30 Tala Abu-Ghazaleh, *IP Road Map—The World... And Us*, Address (18 Feb. 2002) (transcript available at <http://www.tagi.com/news/speeches/18feb.htm>).

31 Arab Report, supra note 1: 70.